IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.695 OF 2005
IN
NOTICE OF MOTION NO.1771 OF 2004
IN
SUIT NO.922 OF 1980

Shardaben C. Shah & Ors.....Plaintiffs

Vs.

Sarojini G. Wagh.....Defendant

Mr.M.L. Palan i/b. Dave & Co., for the Plaintiffsa
Mr. S.B. Prabhavalkar, for Defendant Nos. 3 and 4.

CORAM: A.M. KHANWILKAR, J.
DATE : 8th August, 2005

P.C.:

1. Heard Counsel for the parties. Perused the pleadings.

By this Chamber Summons, in substance, the plaintiffs are not only seeking amendment of the decree as passed, but also prayer (a) of the plaint, on the assertion that the mistake has occurred therein which is a clerical error. The decree refers to an agreement dated 15th September, 1973. That date is derived from prayer clause (a) of the plaint, which refers to agreement dated 15th September, 1973. However, the suit agreement was executed between the parties on 15th April, 1973. The suit agreement has been appended to the plaint as Exhibit "B". Even the original document, contends Counsel for the plaintiffs, was tendered before the Court when the decree was passed on 4th March, 2002. On this submission, it is contended that the plaintiffs be permitted to carry out necessary amendment in the plaint in the interest of justice as also to amend the decree as passed on 4th March, 2003 to read the date of agreement as 15th April, 1973 instead of 15th September, 1973 as mentioned.

2. This prayer is, however, vehemently opposed by Sarojini G. Wagh who is the surviving defendant and represented by Mr. Prabhavalkar. The objection raised on behalf of the defendant before this Court is as follows:- Firstly, the application is not maintainable as no leave under Order 21 Rule 22 of the Code of Civil Procedure has been obtained. Secondly, the application is filed simplicitor under Section 152 of the Code of Civil Procedure, which provision can be invoked only for correction of judgment, decree or orders to amend the mistakes which are of clerical or arithmetical in nature and not otherwise. It is also submitted that the other heirs of deceased defendant have not been brought on record, who infact have filed independent suit for declaration that the decree in question is bad.

3. In support of the submissions canvassed on behalf of the defendant reliance is placed on the decision of the Apex Court reported in **Dwarka Das vs. State of M.P. & Anr., (1999) 3 SCC 500** and **State of Punjab vs. Darshan Singh, 2004 (2) Mh.L.J. 565.**

4. Having considered the rival submissions, I shall straightway deal with the first objection taken on behalf of the Defendant. There is no substance in the objection that leave under Order 21 Rule 22 ought to have been taken before instituting the present application. This submission proceeds on the erroneous assumption that the application is for execution of the decree. However, the amendment application is simplicitor for correction of the decree as passed. Thus understood, the question of following procedure under Order 21

Rule 22 of C.P.C. before institution of the present application does not arise. That stage will arise only after amendment decree is put in execution.

5. The second submission canvassed on behalf of the defendant also does not commend to me. Indeed, the defendant will be justified in contending that the scope of Section 152 of C.P.C. is very limited. That can be invoked only where the attempt is for correction of clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The decisions are relied upon on behalf of the defendant in support of this submission. This submission, however, overlooks that in addition to the powers under Section 152 of the Code this Court has also inherent powers under Section 151 and general powers under Section 153 of the C.P.C. To get over this position, Counsel for defendant contends that the application expressly refers to Section 152 of C.P.C. Even so, the plaintiffs, to do substantial justice in the matter, can be permitted to carry out amendment in the application as presented so as to permit them to invoke the inherent powers of this Court under Section 151 of the C.P.C. and general powers under Section 153 of the Code. In the facts of the present case, I have no hesitation in permitting the plaintiffs to invoke the inherent power of this Court. In fact, having regard to the nature of mistake which is brought to the notice of this Court, there can be no doubt that it is clerical mistake caused on account of inadvertence. The document of which specific performance is sought is placed on record at Exh.B to the plaint. There can be no doubt that the

same is dated 15th April, 1973, but is wrongly mentioned in prayer clause (a) of the plaint as 15th September, 1973 on which basis the subject decree has been passed. To undo such mistake, in the interest of justice, in my opinion, it is a fit case for exercising the powers under Sections 151 and 153 read with Section 152 of the Code. Counsel for the plaintiffs has rightly placed reliance on the decision of our High Court in the case of **Narhari Balku Kavade (deceased by LRs.) & Ors. v. Hanmanta Timma Pujari (deceased by LRs.) & Ors., AIR 2004 Bom.342** that mistake of the kind which has occurred in the present matter ought to be corrected by invoking the powers under Sections 151, 152 and 153 of the Code, as the situation so warrants.

6. Counsel for the plaintiffs assures to carry out necessary amendment by placing on record further affidavit so as to seek relief as prayed in the Chamber Summons by invoking provisions of Section 151 and 153 of the Code. That liberty is granted. Amendment be carried out forthwith.

7. In so far as the other objection that the heirs of deceased defendant are not brought on record, in my opinion, will not make any difference as the proceedings are pursued by the present surviving defendant. That will not prelude this Court in exercising inherent powers in the fact situation of the present case.

8. Viewed in this perspective, in my opinion, there is no difficulty in acceding to the request of the plaintiffs to allow the Chamber Summons in terms of prayer clauses (a)(i),

(b) and (c) as amended. Ordered accordingly. No order as to costs.

9. It is, however, made clear that if any substantive suit has been filed by the heirs of deceased defendant that will have to be decided on its own merits in accordance with law.

At this stage Counsel for the defendant seeks stay of operation of this order to enable the defendant to take the matter in Appeal. This prayer is strenuously objected by the Counsel for the Plaintiffs. However, in my opinion, it will be appropriate to keep the order passed today in abeyance for a period of four weeks from today to enable the defendant to take the matter in appeal, if so advised.

(A.M. KHANWILKAR, J.)